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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,536	10/30/2003	Mary Ellet	D6501 CIP	7582
7590 06/29/2005			EXAMINER	
Benjamin Aaron Adler ADLER & ASSOCIATES 8011 Candle Lane Houston, TX 77271			PRICE, CARL D	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/697,536

Applicant(s)

ELLET, MARY

Examiner

CARL D. PRICE

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-13 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13 and 18-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### Response to Arguments

Applicant's arguments with respect to claims 1-9, 11-13 and 18-26 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously considered. For example, independent claim 1 now requires the limitations of:

- *independent* top panel *and* a front panels;
- a cover disposed in covering relation independently to the top panel and to the front panel *or* to a combination of said top panel and said front panel; and
- means for fastening the covers together *or* for fastening the cover to a top *or* front surface of a raised hearth *or* a combination thereof;
- a center section adapted to adjust in length, wherein each of the end sections and the center section comprises a cushioning material; and
- means for connecting the first end section to the second end section with a distance therebetween corresponding to a length of the adjustable center section.

See the following examiner's office action addresses the limitations of applicant's invention as now set forth in the currently amended claims.

### Specification

The disclosure is objected to because of the following informalities:

On page 1 of the specification the copending application information must be updated.

Appropriate correction is required.

**Claim Rejections - 35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added subject matter which was not described in the specification as originally filed includes:

- a cover disposed in covering relation independently to the top panel and to the front panel or to a combination of said top panel and said front panel; and
- means for fastening the covers together or for fastening the cover to a top or front surface of a raised hearth or a combination thereof;

**Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-26: Rejected under 35 U.S.C. 112, second paragraph**

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite since it is unclear which of the alternative arrangements of the claimed elements would necessarily make up the invention.

- a cover disposed in covering relation independently to the top panel and to the front panel or to a combination of said top panel and said front panel; and
- means for fastening the covers together or for fastening the cover to a top or front surface of a raised hearth or a combination thereof;

Claim 1 is also vague and indefinite since it is not clear what is meant by “a combination of said top panel and said front panel”.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-8, 9, 10, 11-13, 18-26: Rejected under 35 U.S.C. 102**

Claims 1-8, 9, 10, 11-13 and 18-26 are rejected under 35 U.S.C. 102(b) as being anticipated by US5058566 (DABBS et al).

**US5058566 (DABBS et al)** shows and discloses an adjustable cushioned fireplace hearth guard comprising:

- first and second end sections each having cushioned top panel and a front panels (P, 70; see the discussion of padding (P) being made of relatively stiff foam backing material columns 5 and 6);
- a fire-resistant fabric cover (82) disposed in covering relation independently (see 70) to the top panel and to the front panel or to a combination of said top panel and said front panel; and
- a center section (76) adapted to adjust in length (i.e. – “As can be seen, the padding is constructed of attached segments 84. Therefore, when the frame assembly F is configured and secured to a fireplace hearth H of given width, the padding can be readily sized to fit the frame assembly F by detaching excess segments 80, preferably by cutting.”; see column 5, lines 1-19);
- means for connecting (36, 40, 44) the first end section to the second end section with a distance therebetween corresponding to a length of the adjustable center section (e.g. - 12, 24, 28, 30, etc.); and
- means for fastening (e.g. - 12, 24, 28, 30, etc.) the cover to a top or front surface of a raised hearth or a combination thereof.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 9 is rejected under 35 U.S.C. 103(a)**

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over **US5058566 (DABBS et al)** in view of **US005603140A (Pryce)**.

**US5058566 (DABBS et al)** shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the adjustable center section being perforated at parallel intervals along the width thereof forming a structure comprising perforated segments wherein the perforated segments are adapted to be removed thereby adjusting length.

**US005603140A (Pryce)** teaches, form the same edge guard field of endeavor as **US5058566 (DABBS et al)**, forming a protective panel section to be perforated (12) at parallel intervals along the width thereof forming a structure comprising perforated segments wherein the perforated segments are adapted to be removed thereby adjusting length.

In regard to claim 9, for the purpose of providing means to readily adjust the length of the center section, it would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to form the center panel of **US5058566 (DABBS et al)** to include perforations at parallel intervals along the width, in view of the teaching of

**Conclusion**

See the attached PTO FORM for prior art made of record that is not relied upon, which is considered pertinent to applicant's disclosure.

**THIS ACTION IS MADE FINAL**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CARL D. PRICE** whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Monica S. Carter** can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Carl D. Price', with a stylized flourish at the end.

CARL D. PRICE  
Primary Examiner  
Art Unit 3749

cdp

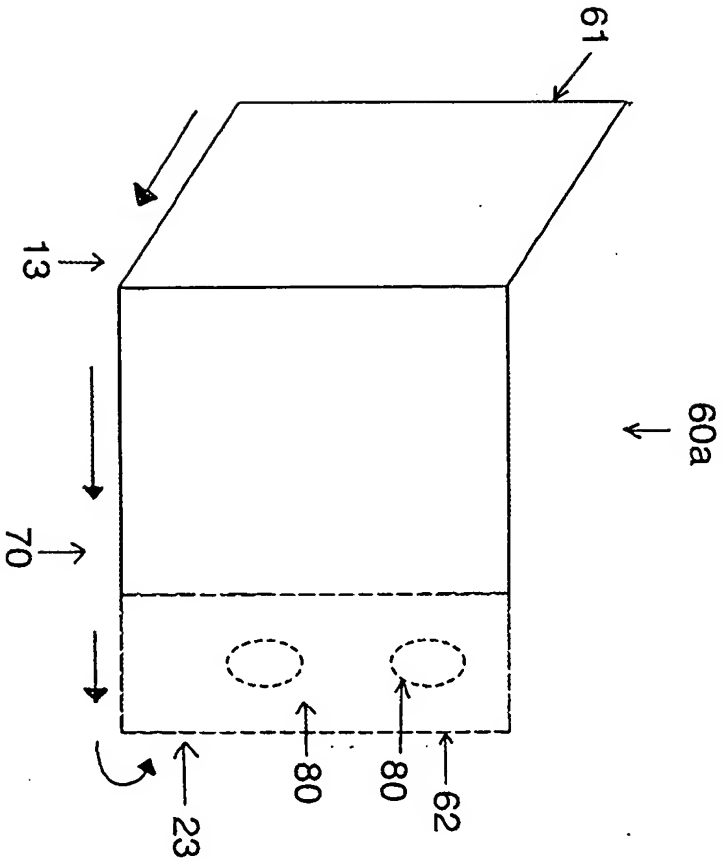


Fig. 3A

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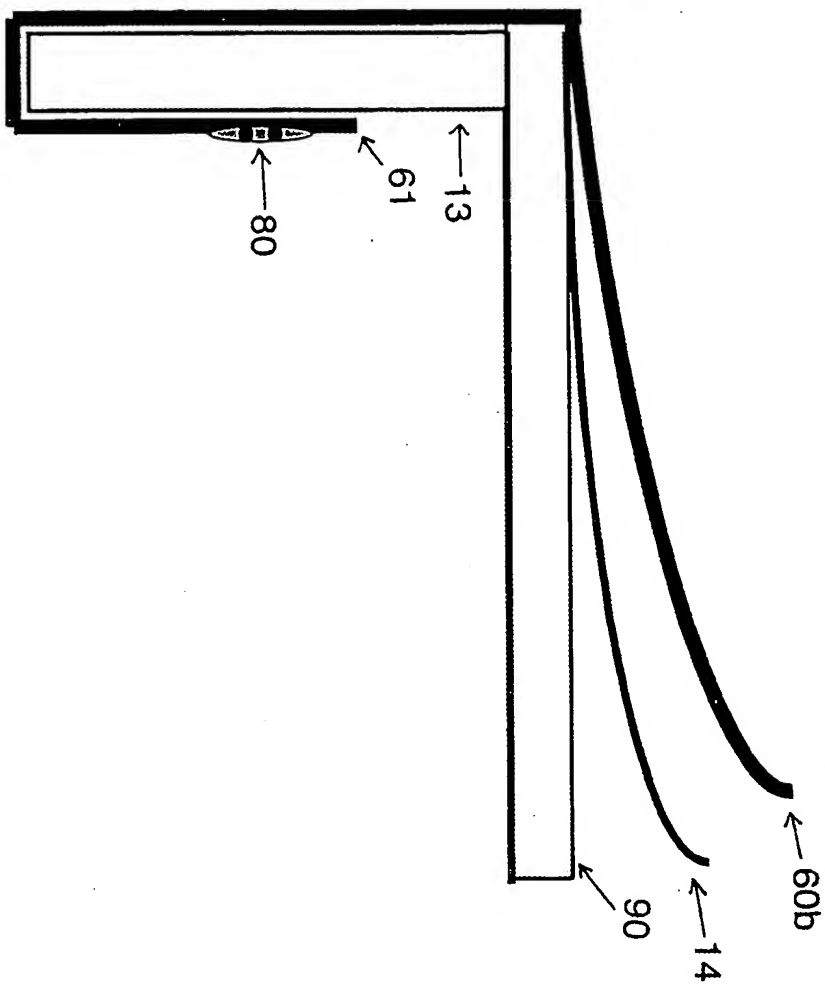


Fig. 3B

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Example  
6/25/05